

No. 11454

United States
Circuit Court of Appeals
For the Ninth Circuit.

R. P. BONHAM, District Director, Immigration
and Naturalization Service,

Appellant,

vs.

HELENE EMILIE BOUISS,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington
Northern Division

FILED

JAN 24 1947

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

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Seattle, Washington.

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Attorney for Appellee,

Spalding Building,

Portland, Oregon. [1*]

* Page numbering appearing at top of page of original certified Transcript of Record.

In the District Court of the United States for the
Western District of Washington,
Northern Division

No. 1589

In the Matter of the Application of
HELENE EMILIE BOUISS,
Plaintiff,
vs.

GEORGE W. TYLER, acting United States Dis-
trict Director of Immigration,
Defendant.

PETITION FOR WRIT OF
HABEAS CORPUS

To the Honorable Judges of the District Court of
the United States, for the Western District of
Washington, Northern Division.

Comes now John A. Bouiss, a citizen of the
United States of America, and the lawful husband
of plaintiff herein, for and on behalf of plaintiff
and petitioner, and respectfully shows the Honor-
able Judges of the above entitled court the follow-
ing:

I.

That plaintiff above named, is now unlawfully
detained, imprisoned and restrained of her liberty
by, and under the direction and control of defendant
George W. Tyler, acting United States District
Director of Immigration, at the Immigration Sta-

tion in the City of Seattle, Washington, and within the jurisdiction of the above entitled court.

II.

That plaintiff is a woman whose mother was a Japanese national and whose father was a German national; that she is the lawful wife of an American Citizen, the said petitioner John A. Bouiss, having entered into a contract of marriage with the said John A. Bouiss on the high seas on May 9th, 1946, aboard the United States War Shipping Administration [2] vessel, "Stetson Victory"; that at the time of her marriage plaintiff was lawfully aboard said vessel, in passage to the United States, and being in possession of a Swedish passport.

III.

That the alleged cause or pretense for the restrain and detention of plaintiff is, to the best of petitioner's knowledge, information and belief, as follows:

That upon arrival in the United States at the port of entry, Seattle, Washington, plaintiff was taken into custody by defendant or officers of the United States Immigration Service acting under his direction and orders and placed in custody at said Immigration station; that an inquiry was held by a Board of Special Inquiry of the United States States Immigration Service at Seattle, Washington, hearings being held on May 12, May 16th, and May 20th, 1946, and that on June 19th, 1946, the order of said Board of Special Inquiry excluding plaintiff

from the United States was approved by the Board of Immigration Appeals, and an order was issued excluding plaintiff from the United States solely on the ground that plaintiff is an alien ineligible to citizenship.

IV.

That said exclusion order, and the detention of plaintiff by defendant and his agents, is unlawful, null and void, in that plaintiff is the lawful wife of a citizen of the United States, and that as such is lawfully admissible to the United States as a non-quota immigrant, under the provisions of subdivision (a) of Section 4 of the Immigration Laws, which provide that the terms non-quota immigrant means "an immigrant who is . . . the wife . . . of a citizen of the United States" and plaintiff not being subject to any exception thereof.

Wherefore, petitioner prays that a Writ of Habeas [3] Corpus be granted herein, and issue out of this court, directing said George W. Tyler, defendant, and commanding that he produce the body of said plaintiff before this court at a time and place in such writ specified, then and there to do what shall be ordered by this court with respect to the detention and restraint of plaintiff and petitioner further prays that plaintiff be speedily freed of her unlawful restraint and granted liberty from her unlawful detention.

Dated at Seattle, Washington this 5th day of July, 1946.

JOHN A. BOUISS,
Petitioner.

JOHN CAUGHLIN,
LEO LEVENSON,
Attorneys for Plaintiff and
Petitioner.

United States of America,
Western District of Washington—ss.

John A. Bouiss, being first duly sworn, on oath deposes and says, that he is the petitioner above named, that he has read the same, knows the content thereof, and that the same is true, to his best knowledge and belief.

JOHN A. BOUISS.

Subscribed and sworn to before me this 5th day of July, 1946.

JOHN CAUGHLAN,
Notary Public for Wash-
ington.

[Endorsed]: Filed July 5, 1946. [4]

[Title of District Court and Cause.]

AMENDED PETITION FOR WRIT OF
HABEAS CORPUS

To the Honorable Judges of the District Court of
the United States, for the Western District of
Washington, Northern Division.

Comes now John A. Bouiss, a citizen of the
United States of America, and the lawful husband
of plaintiff herein, for and on behalf of plaintiff
and petitioner, and files this first Amended Petition
and respectfully shows the Honorable Judges of
the above entitled court the following:

I.

Petitioner is a United States citizen having an
honorable discharge certificate from the armed
forces of the United States and having served in
the army during the Second World War.

II.

That plaintiff above named, is now unlawfully
detained, imprisoned and restrained of her liberty
by, and under the direction and control of defend-
ant George W. Tyler, acting United States District
Director of Immigration, at the Immigration Sta-
tion in the City of Seattle, Washington, and within
the jurisdiction of the above entitled court.

III.

That plaintiff is a woman whose mother was a
Japanese national and whose father was a German
national; that she is [5] the lawful wife of an

American Citizen, the said petitioner John A. Bouiss, having entered into a contract of marriage with the said John A. Bouiss on the high seas on May 9th, 1946, aboard the United States War Shipping Administration vessel "Stetson Victory"; that at the time of her marriage plaintiff was a national of the country of Sweden and was lawfully aboard said vessel, in passage to the United States, and being in possession of a Swedish passport.

IV.

That the alleged cause of pretense for the restrain and detention of plaintiff is, to the best of petitioner's knowledge, information and belief, as follows:

That upon arrival in the United States at the port of entry, Seattle, Washington, plaintiff was taken into custody by defendant or officers of the United States Immigration Service acting under his direction and orders and placed in custody at said Immigration station; that an inquiry was held by a Board of Special Inquiry of the United States Immigration Service at Seattle, Washington, hearings being held on May 12, May 16th, and May 20th, 1946, and that on June 19th, 1946, the order of said Board of Special Inquiry excluding plaintiff from the United States was approved by the Board of Immigration Appeals, and an order was issued excluding plaintiff from the United States solely on the ground that plaintiff is an alien ineligible to citizenship.

V.

That said exclusion order, and the detention of plaintiff by defendant and his agents, is unlawful, null and void, in that plaintiff is the lawful wife of a citizen of the United States, and that as such is lawfully admissible to the United States as a non-quota immigrant, under the provisions of subdivision (a) of Section 4 of the Immigration Laws, which provide [6] that the term non-quota immigrant means "an immigrant who is . . . the wife . . . of a citizen of the United States" and plaintiff not being subject to any exception thereof. Petitioner further alleges that by virtue of Public Law 271 79th Congress of the United States, Chapter 591, 1st Session, alien spouses of United States citizens who have been honorably discharged from the armed forces in Second World War shall be admitted to the United States, and plaintiff not being subject to any exception thereof.

Wherefore, Petitioner prays that a Writ of Habeas Corpus be granted herein, and issue out of this court, directing said George W. Tyler, defendant, and commanding that he produce the body of said plaintiff before this court at a time and place in such writ specified, then and there to do what shall be ordered by this court with respect to the detention and restraint of plaintiff and petitioner further prays that plaintiff be speedily freed of her unlawful restraint and granted liberty from her unlawful detention.

Dated at Portland, Oregon, this 9th day of July, 1946.

/s/ JOHN A. BOUISS,

Petition.

LEO LEVENSON,

JOHN CAUGHLAN,

Attorneys for Plaintiff and
Petitioner.

State of Oregon

County of Multnomah—ss.

John A. Bouiss, being first duly sworn, on oath deposes and says, that he is the petitioner above named, that he has read the same, knows the content thereof, and that the same is true, to his best knowledge and belief.

/s/ JOHN A. BOUISS.

Subscribed and sworn to before me this 9th day of July, 1946.

[Seal] /s/ LEO LEVENSON,

Notary Public for Oregon. My commission expires 4/14/50.

[Endorsed]: Filed July 12, 1946. [7]

[Title of District Court and Cause.]

RULE TO SHOW CAUSE

On reading and filing the petition on behalf of Helene Emilie Bouiss, duly signed and verified by petitioner, John A. Bouiss, the husband of said plaintiff, wherein it appears that she is unlawfully imprisoned and restrained of her liberty by, and

under the direction of, George W. Tyler, acting United States District Director of Immigration at the Immigration Station, within the jurisdiction of the above entitled court, and stating that said restraint and detention is unlawful in that plaintiff is the lawful wife of an American citizen, namely the petitioner, John A. Bouiss, and from which it appears that the court should grant a hearing on said petition for a writ of habeas corpus. Now Therefore,

It Is Hereby Ordered that said George W. Tyler, acting United States District Director of Immigration, appear before the Hon. Paul McCormick, District Judge, at the United States Courthouse in the City of Seattle, Washington, on Monday, the 8th day of July, 1946, at 10:00 o'clock in the forenoon, then and there to show cause why a writ of habeas corpus should not issue and said plaintiff restored to her liberty, and to do and receive what shall then and there be considered concerning the said Helene Emilie Bouiss, together with the cause of her detention; and

It Is Further Ordered that service of this rule to show cause be made forthwith upon the said George W. Tyler, acting Director of Immigration, and [8] upon the United States District Attorney for the Western District of Washington.

Dated at Seattle, Washington, this 5th day of July, 1946.

/s/ LLOYD L. BLACK,

United States District Judge.

Presented by:

/s/ LEO LEVENSON,
Attorney.

/s/ JOHN CAUGHLAN,
Attorney.

[Endorsed]: Filed July 5, 1946. [9]

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

To the Honorable Paul J. McCormick, Judge of the
District Court of the United States for the
Western District of Washington.

Comes now John P. Boyd, Chief, District Adjudications Division, Immigration and Naturalization Service, Department of Justice, Seattle, Washington, for and on the behalf of the respondent, Geo. W. Tyler, Acting District Director, Immigration and Naturalization Service, Department of Justice, Seattle, Washington, and for answer and return to the Order to Show Cause herein entered, certifies and shows to this Court that the said Helene Emilie Bouiss was detained by this respondent at the time she arrived in the United States at the port of Seattle, Washington, to wit, on the 12th day of May, 1946, on the SS "Stetson Victory", as an alien person of mixed blood not entitled to admission into the United States under the laws of the United States, pending a decision on her application for admission; that thereafter, to wit, on

the 13th day of May, 1946, the said petitioner was accorded a hearing before a legally constituted Board of Special Inquiry at the United States Immigration Station, Seattle, Washington, and hearing being continued or reopened from May 13 to May 15, 16, and 20, 1946; resulting in the alien's application for admission into the United States being denied by said Board of Special Inquiry, for the reasons that she was found to be an immigrant alien not in possession of a valid immigration visa, and as an alien ineligible to citizenship and not entitled to enter the United States under any exception of Paragraph (c), Section 13, of the Immigration Act of 1924. The said Helen Emilie Bouiss appealed from the decision of the Board of Special Inquiry to the Attorney General at Washington, D. C.; on June 10, 1946, the Commissioner of Immigration and [10] Naturalization at Philadelphia, Pennsylvania, entered a memorandum decision ordering that the said excluding decision of the Board of Special Inquiry be affirmed, solely on the ground that under Section 13(c) of the Act of May 26, 1924, as amended, the petitioner is inadmissible to the United States, in that she is an alien ineligible to citizenship and not entitled to enter the United States under any exception of said subsection; that thereafter the said order was approved by the Board of Immigration Appeals, Washington, D. C.; since the final decision of the Board of Immigration Appeals, this respondent has held, and now holds and detains, the said Helene Emilie Bouiss for deportation from the United States as an alien of mixed blood, ineligible

to citizenship, not entitled to admission into the United States under the laws of the United States, and subject to deportation under the laws of the United States.

The certified record of the Department of Justice in the matter of the application of Helene Emilie Bouiss for admission into the United States is attached hereto and made a part and parcel of this Return, as fully and completely as though set forth herein in detail.

Wherefore, respondent prays that the petition for a Writ of Habeas Corpus be denied.

/s/ JOHN P. BOYD. [11]

United States of America,
Western District of Washington,
Northern Division—ss.

John P. Boyd, being first duly sworn, on oath deposes and says: That he is the Chief, District Adjudications Division, Immigration and Naturalization Service, Seattle, Washington and represents the Respondent named in the foregoing Return; that he has read the foregoing Return, knows the contents thereof, and believes the same to be true.

/s/ JOHN P. BOYD.

Subscribed and sworn to before me this 9th day of July, 1946.

[Seal] /s/ MILDRED GROGAN,
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed July 10, 1946. [12]

United States District Court, Western District of
Washington, Northern Division

No. 1589

MEMORANDUM OF RULING AND ORDER
GRANTING WRIT OF HABEAS CORPUS
RELEASING HELENE EMILIE BOUISS
FROM THE CUSTODY OF IMMIGRATION
AUTHORITIES OF THE UNITED STATES.

In the Matter of the Petition of Helene Emilie
Bouiss for a Writ of Habeas Corpus.

McCormick, District Judge:

John A. Bouiss, a citizen of the United States and the holder of an honorable discharge certificate from the armed forces of the Nation for service in the Second World War, petitions for the Writ of Habeas Corpus to release his lawful wife from the custody of the Immigration Officers by whom she is detained for deportation.

The writ is sought upon the ground that the detention of Mrs. Bouiss is unlawful in that she is the lawful wife of the petitioner and that as such she is lawfully admissible to the United States as a non-quota immigrant pursuant to Public Law 271, 79th Congress, Chapter 591, First Session, approved December 28, 1945, 8 U.S.C.A., Section 232, and under Section 4(a) of the Immigration Act of 1924.

The detained alien has been by the Immigration authorities precluded from entering the United

States with her husband, who was returning from overseas military duty in Japan, upon the sole ground that she is "ineligible to citizenship."

The position of the Government is based entirely upon a generalized phrase in the Act of December 28, 1945, *supra*, which limits the application of its privileges and [13] preferences to alien spouses or alien children of the service men "if otherwise admissible under the Immigration laws." And it is asserted that as Mrs. Bouiss is a person of mixed racial bloods, being one-half White and one-half Japanese, proscribed by regulations duly promulgated by the Commissioner of Immigration and Naturalization, Title 8, Regulations 350.1, 350.2, Racial Limitations upon Naturalization as of March 1, 1944, and thus ineligible to citizenship, she is also to be excluded from entering the United States under the provisions of Subsection (c) of Section 13 of the Immigration Act of 1924, Title 8, Section 204(c) U.S.C.A.

When consideration is given to the definition of a non-quota immigrant in Section 4(a) of the Immigration Act of 1924, Mrs. Bouiss, even though ineligible to naturalization, is admissible to the United States as a non-quota immigrant. This section reads:

"Non-quota Immigrant Defined. * * * The term 'Non-quota Immigrant' means — (a) An Immigrant who is the unmarried child under twenty-one years of age, or the wife, or the husband, of a citizen of the United States: Provided, That the

marriage shall have occurred prior to issuance of visa and, * * *."

No question is raised as to the marital or health status of Mrs. Bouiss upon her arrival with her husband at Seattle, Washington. Her marriage to the petitioner took place on the high seas enroute to the United States and it occurred prior to the issuance of the visa.

But even if it be held that under the restrictive literal terms of Section 13(c) of the Immigration Act of 1924, 8 U.S.C.A. 213(c) and in line with the decision of the Supreme Court in *Chang Chan v. Nagle*, 268 U.S. 346, [14] (1925), the wife of the petitioner should be excluded from the United States, we think that such conclusion is unwarranted if the patent purpose of the whole of the Act of December 28, 1945 is given consideration.

This remedial statute was enacted in a post-bellum environment which found millions of the personnel of the armed forces of the Nation in distant and widely separated foreign areas around the globe. Its broad and comprehensive terms clearly state the purpose and object which Congress sought to accomplish by this legislative innovation. The intent to keep intact all conjugal and family relationships and responsibilities of honorably discharged service men of the Second World War is clearly expressed, and the obvious purpose to safeguard the social and domestic consequences of marriage of service men while absent from the United States must take precedence over a generalized

phrase which if interpreted along purely racial lines would frustrate the plain purpose of the whole statute. Such a construction should not be adopted.

See *Holy Trinity Church v. United States*, 143 U.S. 457; *Ozawa v. United States*, 260 U.S. 178 at page 194; *Cabell v. Markham*, (C.C.A.2, 1945), 148 F. 2d 737; *United States v. 21 Pounds 8 Ounces of Platinum* (C.C.A. 4, 1945), 147 F. 2d, 78.

It follows that the writ of habeas corpus should issue to release Helene Emilie Bouiss from the custody of the respondent Acting District Director, Immigration and Naturalization Service, Department of Justice, Seattle, Washington, and It Is So Ordered.

Dated July 25, 1946.

/s/ PAUL J. McCORMICK,

United States District Judge.

[Endorsed]: Filed July 25, 1946. [15]

United States District Court, Western District of
Washington, Northern Division

No. 1589

In the Matter of the Petition of

HELENE EMILIE BOUISS, for Writ of
Habeas Corpus.

HELENE EMILIE BOUISS,

Petitioner,

vs.

GEORGE W. TYLER, Acting District Director,
Immigration and Naturalization Service, Se-
attle, Washington,

Respondent.

ORDER AND WRIT

This matter having come on before the under-
signed judge of the U. S. District Court, upon the
petition of John A. Bouiss, citizen of the United
States, and honorably discharged veteran of the
U. S. armed forces, said petition having been filed
on the 5th day of July, 1946, and upon the amended
petition of said petitioner, filed on the 9th day of
July, 1946, for writ of habeas corpus to release
his lawful wife, Helene Emilie Bouiss from custody
of respondent, George W. Tyler, Acting District
Director of Immigration, and the Hon. Lloyd L.
Black, U. S. District Judge of the above entitled
district, having on the 5th day of July, 1946 issued

a rule to show cause, returnable before the undersigned District Judge on the 8th day of July, 1946, requiring respondent to show cause why the said Helene Emilie Bouiss should not be released from custody;

Petitioner and Helen Emilie Bouiss being represented by Leo Levenson of Portland, Oregon, and John Caughlan of Seattle, Washington; respondent being represented by Charles [16] Dennis, U. S. District Attorney, and Tom A. Durham, Assistant U. S. District Attorney, and John P. Boyd, Esq.; and respondent having made and filed his return to said rule to show cause on the 10th day of July, 1946, and the undersigned judge of the above entitled court having considered the briefs of respective counsel filed herein and said return, and it appearing that the said Helene Emilie Bouiss is the lawful wife of an honorably discharged service man who served in World War II, the marriage of the parties having occurred on the high seas while petitioner was in the armed forces, and prior to the issuance of a visa, and the court having on the 25th day of July, 1946 made and filed its memorandum of ruling and order granting writ of habeas corpus, releasing Helene Emilie Bouiss from custody of immigration authorities of the United States, now therefore,

It Is Ordered that Helene Emilie Bouiss be and she is hereby discharged and released from the custody of respondent, George W. Tyler, Acting District Director of Immigration, and from any cus-

tody, control, or detention of the immigration authorities of the United States, and

It Is Further Ordered that respondent, George W. Tyler, Acting District Director of Immigration, may appeal from this order and writ of habeas corpus within thirty days of the entry thereof.

Exception to this order by respondent is hereby granted.

Dated this 29th day of July, 1946.

Approved as to form.

TOM A. DURHAM,
Asst. U. S. Atty.

Presented by:

JOHN CAUGHLAN,
One of the attorneys for
petitioner.

PAUL J. McCORMICK,
District Judge.

[Endorsed]: Filed July 29, 1946. [17]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that R. P. Bonham, District Director, Immigration and Naturalization Service, appellant, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the

Order and Writ of Habeas Corpus entered in this action on July 29, 1946.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ TOM A. DURHAM,
Assistant United States
Attorney.

Received a copy of the within notice this 13th day of August, 1946.

JOHN CAUGHLAN,

By G.M.G.

Attorney for Petitioner.

[Endorsed]: Filed August 13, 1946. [18]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

I.

The Court erred in holding and deciding that a Writ of Habeas Corpus be awarded to the petitioner herein.

II.

The Court erred in holding, deciding and adjudging that the petitioner, Helene Emilie Bouiss, be discharged from the custody of respondent, Acting District Director, Immigration and Naturalization Service, Department of Justice, Seattle, Washington.

III.

The Court erred in deciding, holding and adjudging that petitioner, Helene Emilie Bouiss, even though ineligible to naturalization, was admissible to the United States as a non-quota immigrant under Section 4(a) of the Immigration Act of 1924.

IV.

The Court erred in deciding, holding and adjudging that the petitioner, Helene Emilie Bouiss, was admissible to the United States under Public Law 271, 79th Congress, Chapter 591, first section, approved December 28, 1945, 8 U.S.C. Section 232.

Received a copy of the within Assignment of Errors this 11th day of October, 1946.

JOHN CAUGHLAN,

One of the Attorneys for
Petitioner.

/s/ J. CHARLES DENNIS,

United States Attorney.

/s/ TOM DURHAM,

Assistant United States
Attorney.

[Endorsed]: Filed Oct. 17, 1946. [19]

[Title of District Court and Cause.]

STIPULATION FOR EXTENSION OF TIME
FOR FILING RECORD ON APPEAL AND
DOCKETING THIS CASE IN THE CIR-
CUIT COURT OF APPEALS.

It is hereby stipulated by and between the parties
hereto that the time for filing the record on the
appeal and for the docketing of the above case shall
be extended to October 31, 1946.

J. CHARLES DENNIS,
United States Attorney,

TOM A. DURHAM,
Assistant United States
Attorney.

JOHN CAUGHLAN,
One of the Attorneys for
Petitioner.

[Endorsed]: Filed Sept. 12, 1946. [20]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
RECORD ON APPEAL AND DOCKETING
CASE IN CIRCUIT COURT OF APPEALS.

This matter having come on to be heard before
this court upon the stipulation of the parties hereto
by their respective counsel for the extension of time
for filing the record on appeal and for docketing

the above case in the Circuit Court of Appeals, and the stipulation being on file herein, and the court being fully advised in the premises; now therefore, it is hereby

Ordered that the time for filing the record on appeal in this cause and docketing the above action in the Circuit Court of Appeals is hereby extended to October 31, 1946.

Dated this 16th day of September, 1946.

PAUL J. McCORMICK,
U. S. District Judge.

Presented by:

TOM A. DURHAM,
Asst. U. S. Attorney.

Approved as to Form:

JOHN CAUGHLAN,
Attorney for Petitioner.

[Endorsed]: Filed Sept. 17, 1946. [21]

[Title of District Court and Cause.]

STIPULATION FOR TRANSMISSION OF ORIGINAL RECORD

It is hereby stipulated by and between counsel for petitioner and for the District Director, Immigration and Naturalization Service, Seattle, Washington, that the certified Immigration file and rec-

ords of the Department of Justice covering the exclusion proceedings against the petitioner, which were filed with the Return of the District Director of Immigration to the Order to Show Cause, may be transmitted with the appellate record in this case, and may be considered by the Circuit Court of Appeals in lieu of a certified copy of said Immigration files and records of the Department of Justice.

/s/ JOHN CAUGHLIN,
Attorney for Petitioner.

/s/ J. CHARLES DENNIS,
United States Attorney,

/s/ TOM A. DURHAM,
Assistant United States
Attorney.

[Endorsed]: Filed Oct. 17, 1946. [22]

[Title of District Court and Cause.]

ORDER FOR TRANSMISSION OF ORIGINAL
RECORD

Upon stipulation of counsel, it is by this court Ordered, and the Court does hereby order, that the Clerk of the above-entitled court transmit with the appellate record in said cause the original file and record of the Department of Justice, covering the exclusion proceedings against the petitioner, which was filed with the Return of the District Director of Immigration to the Order to Show

Cause, directly to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, in order that the said original immigration file may be considered by the Circuit Court of Appeals in lieu of a certified copy of said record.

Done in open court this 18th day of October, 1946.

PAUL J. McCORMICK,
U. S. District Judge.

Received a copy of the within order this 16th day of October, 1946.

JOHN CAUGHLIN for
JOHN CAUGHLAN &
LEO LEVENSON,
Attorneys for Petitioner.

TOM A. DURHAM,
Asst. U. S. Atty.,
Atty. for Respondent.

[Endorsed]: Filed Oct. 19, 1946. [23]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

To the Clerk of the Above-entitled Court:

The respondent, George W. Tyler, Acting District Director, Immigration and Naturalization Service, Seattle, Washington, hereby designates the entire record in this case to be contained in the record

on appeal, more particularly enumerated as follows:

- (1) Petition for Writ of Habeas Corpus.
- (2) Order to Show Cause.
- (3) Return to Order to Show Cause.
- (4) Certified Immigration file and records of the Department of Justice covering the exclusion proceedings against the petitioner.
- (5) Memorandum of Ruling and Order Granting Writ of Habeas Corpus.
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- (12) Order for Transmission of Original Record.
- (13) This Designation.

J. CHARLES DENNIS,
United States Attorney.

TOM A. DURHAM,
Assistant United States
Attorney.

[Endorsed]: Filed Oct. 17, 1946. [25]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing typewritten transcript of record, consisting of pages numbered 1 to 25, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by Designation of Counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, except as to the record in the Immigration and Naturalization Service, Department of Justice, the original of which is enclosed herewith as part of the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to wit: [26]

Clerk's fees, for making record, certificate or return:

5 Pages at 40c	\$2.00
19 Pages at 10c (Copies Furnished)	1.90
Notice of appeal	5.00
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Total	\$8.90

I further certify that the foregoing fees have not been paid for the reason that the appeal herein is being prosecuted by the United States Government.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 19th day of October, 1946.

(Seal)

MILLARD P. THOMAS,
Clerk.

By /s/ TRUMAN EGGER,
Chief Deputy. [27]

[Endorsed]: No. 11454. United States Circuit Court of Appeals for the Ninth Circuit. R. P. Bonham, District Director, Immigration and Naturalization Service, Appellant, vs. Helene Emilie Bouiss, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed October 24, 1946.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals for the
Ninth Circuit

No. 11454

R. P. BONHAM, District Director, Immigration
and Naturalization Service, Seattle, Washing-
ton,

Appellant,

vs.

HELENE EMILIE BOUISS,

Appellee.

NOTICE OF POINTS ON WHICH APPEL-
LANT INTENDS TO RELY ON APPEAL

Notice Is Hereby Given that the above-named appellant intends to rely on the following points in prosecuting his appeal on the Order and Writ of Habeas Corpus awarded the above-named appellee by the United States District Court for the Western District of Washington:

1. That the United States District Court for Western District of Washington erred in holding and deciding that a writ of habeas corpus be awarded to the above-named appellee.

2. That said Court erred in holding, deciding and adjudicating that the appellee Helene Emilie Bouiss be discharged from the custody of the Acting District Director, Immigration and Naturalization Service, Department of Justice, Seattle, Washington. [29]

3. That the United States District Court for the Western District of Washington erred in deciding, holding and adjudicating that the appellee Helene Emilie Bouiss even though ineligible to naturalization was admissible to the United States as a non-quota immigrant under Sec. 4(a) of the Immigration Act of 1924.

4. That the United States District Court for the Western District of Washington erred in deciding, holding and adjudicating that the appellee Helene Emilie Bouiss was admissible to the United States under Public Law 271, 79th Congress, Chapter 591, First Section, approved Dec. 28, 1945 (8 U. S. C. Sec. 232).

/s/ CHARLES DENNIS,
United States Attorney.

/s/ TOM A. DURHAM,
Assistant United States
Attorney.

Received a copy of the within Notice of Points this 30th day of October, 1946.

/s/ JOHN CAUGHLAN,
One of the Attorneys for
Appellee.

[Endorsed]: Filed Nov. 4, 1946. [30]

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD
UPON APPEAL TO BE PRINTED

To the Clerk of the Above-entitled Court:

The appellant, R. P. Bonham, District Director,
Immigration and Naturalization Service, Seattle,
Washington, hereby designates the entire transcript
of record as certified to you to be printed in its
entirety as the record on appeal in the above-entitled
Cause.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ TOM A. DURHAM,
Assistant United States
Attorney.

Received a copy of the within Designation this
30th day of October, 1946.

/s/ JOHN CAUGHLAN,
One of the Attorneys for
Appellee.

[Endorsed]: Filed Nov. 4, 1946. [31]

At a Stated Term, to wit: The October Term
1946, of the United States Circuit Court of Appeals
for the Ninth Circuit, held in the Court Room
thereof, in the City and County of San Francisco,
in the States of California, on Monday, the second

day of December in the year of our Lord one thousand nine hundred and forty-six.

Present:

Honorable Francis A. Garrecht, Senior Circuit Judge, Presiding;

Honorable Clifton Mathews, Circuit Judge;

Honorable Albert Lee Stephens, Circuit Judge.

[Title of Cause.]

ORDER SUBMITTING MOTIONS FOR SUBSTITUTION TO DISMISS APPEAL, AND GRANTING MOTION FOR SUBSTITUTION AND DENYING MOTION TO DISMISS

Ordered motion of appellee to dismiss appeal herein, and motion for substitution of party appellant presented by Mr. Thomas Durham, Assistant United States Attorney, counsel for appellant, and by Mr. Leo Levenson, counsel for appellee, and submitted to the court for consideration and decision.

Upon consideration thereof, Further Ordered that the motion to dismiss be, and hereby is denied, and that the motion for substitution of R. P. Bonham, District Director, Immigration and Naturalization Service, Seattle, Washington, as party appellant in the place and stead of George W. Tyler, Acting District Director, Immigration and Naturalization Service, Seattle, Washington, be, and hereby is granted, and said R. P. Bonham, District Director, be, and he hereby is substituted as party appellant.